

Effective Date: 13 September 1998
Expiration Date: 13 September 2003

MODIFICATION OF
DEPARTMENT OF THE ARMY
REGIONAL PERMIT
PROVIDE FISH PASSAGE THROUGH CULVERTS
WITHIN WASHINGTON STATE
WITHIN THE SEATTLE DISTRICT
071-OYB-4-008100

This regional permit is to:

Perform work in or affecting waters upon the recommendation of the Chief of Engineers, pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344);

Washington State Department of Fish and Wildlife is hereby authorized by the Secretary of the Army:

to place fill material in conjunction with providing fish passage through culverts in waters of the United States within the regulatory boundaries of the Seattle District in Western Washington. This Regional Permit does not authorize the placement of fill material in San Juan County or any navigable water of the United States.

subject to the following conditions:

I. Special Conditions:

1. All fill activities authorized by this Regional Permit must be designed built, and administered by the Washington State Department of Fish and Wildlife (WDFW). The project must have a Washington State Hydraulic Project Approval prior to commencement of filling.
2. Prior to construction of any project which is covered by this permit the WDFW will notify and seek concurrence from the Washington State Parks and Recreation Commission, the Washington State Office of Archaeology and Historic Preservation, and the affected county and Indian tribe(s). The WDFW shall notify and seek concurrence from the United States Department of the Interior, Fish and Wildlife Service (USFWS), and National Marine Fisheries Service, prior to Regional Permit authorization

regarding compliance with provisions of the Endangered Species Act. The WDFW will undertake informal consultation and the preparation of required biological assessments. All formal consultation actions under Section 7(a)(2) of the Act remain a mandatory statutory duty of the Corps of Engineers.

3. This permit only satisfies Federal law and does not satisfy State and local requirements including leasing of the submerged lands, zoning, building, hydraulic, shoreline management or other required permits. The work is authorized only after final approval has been obtained from the State and applicable local government.
4. This permit is applicable only to activities which are performed in accordance with the State laws and local government's Shoreline Management Master Program, building codes, and zoning ordinances.
5. This permit is applicable only to activities which are in accordance with Section 307(c)(3) of the Coastal Zone Management Act and the approved State of Washington Coastal Zone Management Program.
6. All other fill activities in waters of the United States within the Seattle District not covered by this Regional Permit require separate Department of the Army authorization.
7. No activity may occur in a component of the national Wild and Scenic River system; or in a river officially designated by Congress as a "Study River" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency (i.e. National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service), with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status.
8. This permit shall become effective on 13 September 1998. The expiration date of this reissued Regional Permit shall be 5 years from the effective date of the permit, unless specifically extended by the Seattle District.
9. This permit may be revoked by issuance of a public notice at any time the District Engineer determines that the singular or cumulative effects of the activities authorized herein have an adverse effect on the public interest. Following such revocation, any future activities in areas covered by this Regional Permit will be processed as individual permits.
10. The permittee, upon notice of revocation of this permit, shall, without

expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

11. If the District Engineer determines that a specific fill, placed under this Regional Permit, is interfering with navigation, the permittee shall, without expense to the United States and in such time and manner as the District Engineer may direct, restore the waterway to its former condition. If the permittee fails to comply with the direction of the District Engineer, the District Engineer may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.
12. On streams that are traditionally used for recreational navigation with boats, canoes, kayaks, inner tubes or rafts, the permittee shall post warning signs 100 yards upstream from each weir.
13. The permittee hereby recognizes the possibility that the fill material permitted herein may be subject to damage by flooding. The permittee shall not hold the United States liable for any such damage.
14. The WDFW must have the legal right to use and occupy the affected land. This agency shall obtain concurrence on the location of the applicable property line from each affected adjacent upland property owner prior to placing the fill material. If a dispute arises between this agency and the affected adjacent upland property owner on the location of a property line, the agency shall obtain the applicable State Attorney General or County Prosecuting Attorney's opinion that the WDFW has the legal right to use and occupy the affected land.
15. No fill permitted herein shall be placed on a property registered in the National Register of Historic Place or in such a way to affect known archeological or other cultural resources.
16. Work in waters of the United States will be done in such a manner to minimize turbidity which tends to degrade water quality and damage aquatic life.
17. All construction debris shall be disposed in such a manner that it cannot enter waters of the United States.

18. The WDFW will provide the District Engineer a quarterly listing of weirs (fill placed). This listing will contain the location, name of the waterway and the number of weirs, and quantity of fill placed. This listing will include the latitude and longitude of the most upstream and downstream weirs (fill placed) for each waterway. This listing will be available to any interested local, State, or Federal agency upon request to the WDFW.

In addition, a summary report shall be provided to the Corps and USFWS upon future renewals of this permit. The report shall include a listing of all projects completed during the previous permit period and indicate the current condition of each project as functioning as designed or no longer functioning. For projects no longer functioning, a reason for failure must be provided.

19. No fill material permitted herein shall be placed in a wetland or in the mouth of any river, stream, or creek.
20. Fill material will consist of suitable material free from toxic pollutants in other than trace quantities.
21. Fill material will be properly maintained to prevent erosion and other nonpoint sources of pollution.
22. Fill for weirs:
 - a. This permit authorizes the placement of fill material for a maximum of 5 weirs downstream of any existing culvert on any individual stream during any single calendar year.
 - b. The maximum size of rock-filled gabion weirs shall not exceed 6 feet in width, 25 feet in length, and a weir height of 2 feet with $\frac{1}{2}$ of the 6 feet width not exceed 1 foot in height in a stair-step manner.
 - c. The quantity of fill material placed in each weir shall not exceed 8.3 cubic yards. The material used to fill the gabions will be 3- to 6- inch fractured rock.
23. Fill (riprap) for bank protection:
 - a. This permit authorizes the placement of a maximum of 2 cubic yards of 6- to 24- inch clean fractured riprap placed waterward of the line of ordinary high water at each end of the weirs.
 - b. This permit authorizes the placement of a maximum of 100 total cubic

yards of 6- to 24- inch clean fractured riprap along the shoreline providing no more than 1.5 cubic yards of riprap is placed waterward of the line of ordinary high water per running foot along the bank.

- c. The purpose of the riprap placed is to provide bank protection between the weirs and between the existing culvert and the first downstream weir to be authorized by this permit.
- d. Native vegetation or bioengineered techniques shall be used for bank stabilization in lieu of riprap where practicable.

24. Fill placed in streambed:

- a. This permit authorizes the placement of a maximum of 100 total cubic yards of quarry spalls to be placed in the streambed between weirs and the existing culvert.
 - b. The thickness of the quarry spalls shall not exceed 14 inches; the minimum thickness shall not be less than 2 inches.
25. The previously excavated or dredged streambed waste material shall be disposed of at an approved upland site.
26. All fill that is placed in conjunction with this permit shall be obtained from an upland source.
27. Access roads shall be constructed on upland and shall be constructed in a manner that they will not affect the hydrology of any nearby wetlands.

Upon completion of the work, all disturbed areas except access roads shall be regraded to original elevations and contours, and be replanted with native vegetation.

28. Soil erosion and sediment controls shall be established prior to project commencement.
29. If proposed projects fall within special flood hazard areas mapped by FEMA, WDFW shall consult with the local community and FEMA, as appropriate, about proposed fish weir designs when potential increases in 100-year base flood elevations are predicted by WDFW.

NOTE: Sketches of typical installations are furnished for general information in Appendix A.

II. General Conditions:

1. That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; any activities not consistent with the terms and conditions of this permit; any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit and may result in the modification, suspension, or revocation of this permit, in whole or in part.
2. That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of fill into waters of the United States be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Clean Water Act (P.L. 92-500; 86 Stat. 816) or pursuant to applicable State and local law.
3. That when the activity authorized herein involves a discharge during its construction or operation, of any pollutant (including dredged or fill material), into waters of the United States, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementation plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.
4. That no activity associated with this permit may jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act of 1973, or destroy or adversely modify the critical habitat of such species. Such adverse impacts may include but are not limited to loss of habitat, increased noise levels, and increased human activities other than during construction.
5. That the permittee agrees to make every reasonable effort to prosecute the work authorized herein in a manner so as to minimize any adverse impact of the work on fish, wildlife, and natural environmental values.
6. That the permittee agrees to prosecute the work authorized herein in a manner so as to minimize any degradation of water quality.

7. That the permittee shall permit the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.
8. That the permittee shall maintain the structure of work authorized herein in good condition.
9. That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property, invasion of rights, or any infringement of Federal, State, or local laws or regulations, nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein.
10. That this permit does not authorize the interference with any existing or proposed Federal project, and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.
11. That this permit may be either modified, suspended, or revoked, in whole or in part, if the Secretary of the Army or his authorized representative determines that activities identified and authorized within the terms or conditions of this permit are not in the public interest. Any such modification, suspension, or revocation shall become effective 30 days after issuance of public notice of such action. Within this 30-day period, permittees may request a public hearing to be held to present oral and written evidence concerning the proposed modification, suspension, or revocation. The conduct of this hearing and the procedures for making a final decision either to modify, suspend, or revoke this permit in whole or in part shall be pursuant to procedures prescribed by the Chief of Engineers.
12. That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.
13. That this permit does not authorize or approve the construction of particular structures, the authorization of approval of which may require authorization by the Congress or other agencies of the Federal Government.
14. That if and when the permittee desires to abandon the activity authorized herein, they must restore the area to a condition satisfactory to the District Engineer.

15. That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.
16. The word "permittee" shall include such permittee's successors in interest.
17. Impacts to riparian vegetation shall be minimized to the greatest extent possible.
18. Use of heavy equipment in wetlands and along stream banks shall be minimized to the greatest extent practicable.

Date

JAMES M. RIGSBY
Colonel, Corps of Engineers
District Engineer